

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

IN RE: REQUEST FOR INTERNATIONAL  
JUDICIAL ASSISTANCE FROM THE  
NATIONAL COURT ADMINISTRATION  
OF THE REPUBLIC OF KOREA, IN THE  
MATTER OF MALSAENG CO., LTD. v.  
YOUNG-SUNG KIM,

No. C15-80069 MISC LB

**ORDER GRANTING PETITIONER'S  
APPLICATION FOR AN ORDER TO  
CONDUCT DISCOVERY FOR USE IN  
A FOREIGN LEGAL PROCEEDING  
PURSUANT TO 28 U.S.C. § 1782**

[Re: ECF No. 1]

**INTRODUCTION**

Petitioner United States of America filed an *ex parte* application to take discovery pursuant to 28 U.S.C. § 1782. (Application, ECF No. 1.<sup>1</sup>) That statute allows a district court to order a person residing or found within its district to produce documents or provide testimony for use in a foreign legal proceeding, unless the disclosure would violate a legal privilege. (*See* 28 U.S.C. § 1782.) The United States has consented to the undersigned's jurisdiction. (Consent, ECF No. 2.) Upon consideration of the United States's application and the relevant legal authority, the court grants the application.

**STATEMENT**

The National Court Administration of the Republic of Korea requests that the United States

<sup>1</sup> Record citations are to documents in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

Attorney's Office for the Northern District of California obtain information and documents from Google, Inc., a company located in Mountain View, California, which is located in this District. (Memo, ECF No. 1-1 at 1.) The information and documents are sought by the Korean<sup>2</sup> court for use in a lawsuit brought by Malsaeng Co., Ltd. against Young-Sung Kim, for recovery of damages. (*Id.*; *see also* Declaration of Melanie Proctor, Ex. A, ECF No. 1-2.) Specifically, the Korean court seeks, from February 7, 2013 to the present date, (1) a "list of all the applications sold under the name of seller Defendant Yuong-Sung Kim who registered as a seller with the email address of kandroidmobile@gmail.com and ID of KevinKim," (2) the "total number of such applications sold," (3) the "retail prices of each of such applications," and (4) "the total net amount actually paid to the Defendant after deduction of any fees or expenses." (Declaration of Melanie Proctor, Ex. A, ECF No. 1-2 at 11.)

By letters dated January 21, 2015 and February 24, 2015, the United States Attorney's Office requested that Google, Inc. voluntarily provide the requested information. (Declaration of Melanie Proctor, ¶ 3, ECF No. 1-2 at 1.) On February 27, 2015, Google, Inc. informed the United States Attorney's Office that it will not voluntarily provide the requested information, but it may respond to a subpoena. (*Id.*, ¶ 4, ECF No. 1-2 at 2.)

On March 2, 2015, the United States filed the pending application. (Application, ECF No. 1.) It asks the court to grant the application and appoint Assistant United States Attorney Melanie Proctor as Commissioner and authorize her to obtain the requested information from Google, Inc.

## ANALYSIS

### I. LEGAL STANDARD

28 U.S.C. § 1782(a) provides, in pertinent part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter

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<sup>2</sup> The United States's memorandum states that the information and documents are sought by "the Taiwan court," but the court presumes, in light of every other statement in the application, memorandum, accompanying declaration, and proposed order that the United States means "the Korean court."

1 rogatory issued, or request made, by a foreign or international tribunal or upon the  
2 application of any interested person and may direct that the testimony or statement be  
3 given, or the document or other thing be produced, before a person appointed by the  
4 court.

5 A litigant in a foreign action qualifies as an “interested person” under § 1782. *See Intel Corp. v.*  
6 *Advanced Micro Devices, Inc.*, 542 U.S. 241, 256 (2004). In order to apply for discovery pursuant  
7 to § 1782, a formal proceeding in the foreign jurisdiction need not be currently pending, or even  
8 imminent. *Id.* at 258- 59. Instead, all that is necessary is that a “dispositive ruling” by the foreign  
9 adjudicative body is “within reasonable contemplation.” *Id.* at 259 (holding that discovery was  
10 proper under § 1782 even though the applicant’s complaint against the opposing party was only in  
11 the investigative stage). An *ex parte* application is an acceptable method for seeking discovery  
12 pursuant to § 1782. *See In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216,  
13 1219 (9th Cir. 1976) (holding that the subpoenaed parties may raise objections and exercise their  
14 due process rights by bringing motions to quash the subpoenas).

15 A district court has wide discretion to grant discovery under § 1782. *Intel*, 542 U.S. at 260- 61.  
16 In exercising its discretion, a district court should consider the following factors: (1) whether the  
17 “person from whom discovery is sought is a participant in the foreign proceeding”; (2) “the nature of  
18 the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the  
19 foreign government or the court or agency abroad to U.S. federal court judicial assistance”; (3)  
20 whether the request “conceals an attempt to circumvent foreign proof-gathering restrictions or other  
21 policies of a foreign country or the United States”; and (4) whether the request is “unduly intrusive  
22 or burdensome.” *See id.* at 264- 65.

23 A district court’s discretion is to be exercised in view of the twin aims of § 1782: providing  
24 efficient assistance to participants in international litigation, and encouraging foreign countries by  
25 example to provide similar assistance to our courts. *See Schmitz v. Bernstein Liebhard & Lifshitz,*  
26 *LLP*, 376 F.3d 79, 84 (2004). There is no requirement that the party seeking discovery establish that  
27 the information sought would be discoverable under the governing law in the foreign proceeding or  
28 that United States law would allow discovery in an analogous domestic proceeding. *See Intel*, 542  
U.S. at 247, 261-63.

**II. APPLICATION****A. Statutory Requirements**

The United States's application satisfies the minimum requirements of § 1782: Google, Inc. resides in Mountain View, California, which is in this District; the requested discovery is for use in a Korean lawsuit brought by Malsaeng Co., Ltd. against Young-Sung Kim, for recovery of damages, which is a proceeding before a foreign tribunal; the request was made by the National Court Administration of the Republic of Korea, a foreign tribunal; and the instant *ex parte* application is an acceptable method of requesting discovery under § 1782, *see In re Letters Rogatory*, 539 F.2d at 1219.

**B. Exercise of the Court's Discretion**

The court finds good cause to exercise its discretion to authorize the requested discovery. Although Google, Inc. is not a litigant in the Korean lawsuit, the Korean court requested the information, so it is clear that it is receptive to this court's assistance and that the request is not an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States. It also does not appear that the request is unduly intrusive or burdensome. Should Google Inc. disagree upon being served with the subpoena, it may file a motion to quash and raise the issue at that time.

**CONCLUSION**

Based on the foregoing, the court grants the United States's application and appoints Assistant United States Attorney Melanie Proctor as Commissioner and authorizes her to obtain the requested information from Google, Inc. The Clerk of the Court shall close this action for administrative purposes. Should Google, Inc. file a motion to quash, the action shall automatically be reopened.

**IT IS SO ORDERED.**

Dated: March 11, 2015

  
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LAUREL BEELER  
United States Magistrate Judge